

Agenda item: 01

Staff person handling: Jim Lynch, Director

Date/location: May 25, 2006 in Helena, MT

Item: **Outdoor advertising**

Proposed changes to administrative rules

Background

At their November 1, 2005 meeting in Helena, the commission authorized the department to conduct a public hearing regarding proposed changes to the administrative rules governing outdoor advertising.

The hearing was held Friday, March 17 in Helena. The transcript of the hearing is attached.

Since then, Hearing Officer Jim Scheier of the Attorney General's office, has provided a report.

Summary

The commission will be asked to take formal action to adopt, reject, or modify the proposed administrative rules.

Staff recommendation

A recommendation will be presented at the meeting.

Notes/discussion

Commission action

Public hearing transcript

Proposed changed to Administrative Rules governing outdoor advertising

Thursday, March 17, 2006

Transcription prepared by Annell Fillinger, AM Tech Services, LLC – Helena

Opening Remarks – Jim Scheier, Hearing Officer

This hearing is called to order. Let the record show that it is about 10:03 a.m. on March 17, 2006. This hearing is taking place in the Auditorium of the Transportation Building, 2701 Prospect Avenue, Helena, Montana. This is the time and place set for the public hearing in the matter of the adoption of new rules one and two and the amendment of ARM 18.6.202, 211, 212, 221, 232, 242, & 245 regarding outdoor advertising.

My name is Jim Scheier. I'm an Assistant Attorney General. I work for a bureau in the Attorney General's Office called Agency Legal Services Bureau, and I've been appointed to preside over and conduct this hearing. Copies of the Notice of the hearing on the proposed rulemaking are available on the table near the door in case anyone doesn't have one.

Montana Code Annotated Section 2-4-302(7a) requires the presiding officer that rule hearings to read the Notice of Function of the Administrative Review Committee.

Interim Committees and the Environmental Quality Council.

Administrative Rule review is a function of Interim Committees and the Environmental Quality Council or EQC. These Interim Committees of the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes. The Economic Affairs Interim Committee is responsible for the Departments of Agriculture, the Department of Commerce, The Department of Labor and Industry, the Department of Livestock, the Office of the State Auditor and Insurance Commissioner, and the Office of Economic Development. The Education Local Government Interim Committee is responsible for the State Board of Education, Board of Public Education, Board of Regents, Higher Education, and the Office of Public Instruction. The Children Family Health Human Services Interim Committee is responsible to the Department of Public Health and Human Services. The Law and Justice Interim Committee is responsible for the Department of Corrections and the Department of Justice. The Energy and Telecommunications Interim Committee is responsible for the Department of Public Service Regulation. The Revenue and Transportation Committee is responsible for the Department of Revenue and the Department of Transportation. The State Administration and Veterans Affairs Interim Committee is responsible for the Department of Administration, the Department Military Affairs, and the Office of the Secretary of State. The Environmental Quality Council is responsible for the Department of Environmental Quality, the Department of Fish, Wildlife and Parks, and the Department of Natural Resources and Conservation.

These Interim Committees and the EQC have the authority to make recommendations to an agency regarding the adoption, the amendment, or the

repeal of a rule, or to request that agency prepare a statement of the estimated economic impact of a proposal. They also told the members of the Legislature to determine if the proposed rule is consistent with the intent of the Legislature or during a Legislative Session introduce a bill repealing a rule or directing an agency to adopt or amend the rule or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The Interim Committees and the EQC welcome comments and invite members of the public to appear before them or to send written statement in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address for the Environmental Quality Council is P.O. Box 201706, Helena, MT 59620-1706.

Montana 2-4-302(2a) requires each agency to create and maintain a list of interested persons and the rule making subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing regarding proposed agency rule making must be informed of the list by the agency. The Department of Transportation maintains a list of persons interested in various areas of rulemaking related to the department and the Commission and ... will provide the list of persons with notice of proposed rulemaking actions. Paragraph seven of the hearing notice describes how one can be placed on that list.

Notice of this hearing was contained in the Montana Administrative Register, Notice No. 18-113. That was published on February 9, 2006, Issue No. 3, pages 276-283. The notice stated that on March 17, 2006 at 10 a.m. in this location a public hearing would be held to consider the proposed adoption and amendments that were described earlier.

The *Notice of Hearing* stated that interested persons could submit their data, views, or arguments, either orally or in writing at this hearing or submit written data views or arguments to the Transportation Commission. Written comments have to be presented either during this hearing, or prior to the hearing if they have already been submitted, or by 5 p.m. today by delivering them as described in paragraph five of the *Notice of Hearing*.

A presiding officer at a rules hearing can ask questions of persons making statements at the hearing and may in certain circumstances, allow others to ask questions upon request. Persons making statements do not have an automatic right to provide rebuttal or other additional information after they have completed their statement. However, the presiding officer may request further information and may allow other statements for good cause if requested.

The order of presentation today will be: first, the department will have an opportunity to summarize or explain the proposed rulemaking and the reasons for proposing the rules and offer any supporting information. Second, we will hear from proponents of the rules, those in favor of the proposed rulemaking. Third, we will hear from opponents, that is people that are opposed to the rulemaking. Fourth, statements of anyone else who wishes to be heard.

I've got some lists here of folks who have already submitted comments and I'll go through that list when we get to that point. Because we are recording this hearing, all persons making the statements should come forward to the podium so the tape recorder can pick up your statement. Please identify yourself by name, address, and affiliation if any, and state whether you are an opponent or proponent or just want to offer information or testimony. If you intend to offer a document when you testify, make sure that the document can be identified so that we can indicate that it is your document, so refer to it by name. So, we will start with the statement from the Department of Transportation representative.

That publication, again, the Montana Administrative Register is required by statute.

Statement by department

Nick Rotering – MDT

Mr. Scheier, I'm Nick Rotering, staff attorney with the Montana Department of Transportation here in Helena, Montana. Before you today is a proposal that the department took to the Transportation Commission to create two new rules and amend some existing rules as it relates to outdoor advertising. Outdoor advertising is the regulation on the interstate and primary highways of this state by this department under state statute and administrative rule. The statutes have been on the books since 1971 and have only been amended a couple of times by the Legislature. The administrative rule process followed shortly thereafter in the early 70s and then again in the mid-90s and otherwise not too much happens in outdoor advertising as far as changes. Yet, the department is well aware that the industry – the advertising industry – has changed considerably on how they want to present their messages. So based upon that we are trying to see if we can work both sides of this situation today. Now I want to stress that this is the Department of Transportation and the Commission's action. The final decision does rest with the Commission not the department. No doubt, depending on the outcome of this hearing, there will be probably another public hearing conducted or at least some opportunity by the Commission on whatever recommendations you make and what we also make to them.

Just briefly, the first official rule, **rule one** in the notice is an attempt by the department to allow official signs by local governments entering their communities. This is a little bit more than what is allowed right now in the department right-of-way – the little green sign that says “Columbus, Montana, Laurel, etc.” We are trying to allow local governments off the right-of-way to have an opportunity to have “welcome to” signs.

New **rule two** is a recognition of sponsor, benefactors, or support groups that may help non-profit entities or other entities have signs that are probably going to be variable message signs and thank them for their support. As an example, if you are familiar at all with Helena, as you come in on U.S. 12 by Helena High School, they have a new sign there that advertises sporting events, class situations, spring break, and things of that nature. Those signs are very expensive so it is not unusual for a private concern to put some money up to pay for those signs. We are trying to work with both sides to have some type of sponsor recognition, i.e., “Thank you X, Y, Z Corporation for supporting Helena High activities.” Yet, we don't want it to be advertising – we have to have some control there.

The amendment in the definition ties pretty much to the official sign notice and also what is variable message signs.

The permit rule change is more for convenience for the department and the advertising industry. The same with the permit application new sign sites.

The following rule there is **new sign erection**. Again, it is more of a house keeping measure for the department and the industry.

Here is where you are going to get into the controversial one -- **commercial electronic variable message signs**. That goes on for several pages amending an existing rule but it essentially re-writes what is out there. This is the area that we are trying to cooperate with the industry and yet stay within the law on allowing the changes that have occurred within the advertising industry on these electrical signs. And yes, this is going to be controversial. We knew that going in here. But as you can see in our reasoning, 41 other states have entered into this situation and we feel that Montana should at least look at this.

Rural ranch directional signs is merely an attempt again for the department to clean up what is allowable out there in the rural situations, probably on the primaries more than the interstate.

Non-commercial signs. That rule also has a couple of minor changes to it and basically that is what the thing comes down to.

I know one question that might come up – when you take a look at what is in that rather long controversial rule on electronic messages; people are going to raise the point “why don't you go to the Legislature with this particular thing?” Well, when you look at that particular rule and how we are trying to almost micro-manage the industry on seconds and how long the sign can be up, etc., supposing the Legislature did in fact pass a statute like that, we would still have to write a rule and supposing six months into it, we find out that it doesn't work. If it is in the statute, then we are stuck waiting another two years for the session to come in and try and fix something like that. That is why

we are trying to do it under Rule. We think it is within the constraints of the statute and that we are not violating the statute. Thank you.

Proponents

Myron Liable – Proponent

My name is Myron Liable. I'm with the Outdoor Advertising Association of America. I represent the National Trade Association that represents the standardized outdoor advertising media, which includes companies and advertisers and suppliers here in Montana as well. I think on the good news side, I'm really glad I'm an alumnus of the University of Montana and a Helena native, so "go Grizzlies" they did a good job yesterday.

I'm here today to support the regulations concerning what we call the CMS signs – the commercial electronic variable message signs. They are referenced in Section 18.6.232, MCA. With the implementation of these regulations, Montana is going to join the other 41 states which allow changeable message copy on these signs. Right now the standard throughout the county is either a mechanical process where you can change the face of the signs via tri-action or tri-vision or electronic via digital means.

I think what we are seeing with the Montana regulations that are proposed, that they are in the mainstream of both state requirements around the county and the nation, and they are consistent with the Federal Highway Administration policy that was set forth in 1996 which allows changeable message signs regardless of the technology that is used. That is really one of the keys. It is compatible with federal requirements as well as state interpretation and requirements there.

Everyday our advertisers change message on billboards. That is what our industry is all about. We have copy changes, you can make them manually by having a bill poster go up there and post a sheet literally on the poster size unit. We put what we call computerize vinyl units that are pre-painted done with electronic means that can be placed on the billboard unit itself but everyday there are literally hundreds or maybe thousands of billboards messages being changed. What this regulation is all about is keeping up with changing times; it is allowing high-resolution technology to show a static message but allowing several new messages on one billboard face.

We all have digital cameras, we have digital technology, and some of us are probably more high tech savvy than me, but I tell you what has happened is that we not only have digital cameras and digital phones, but there are now digital billboards. That is going to be the future in some areas, not everywhere, but once again the bottom line is that there will be a static messages as developed and highlighted in your regulations.

The technology offers a non-manual way to post static commercial and non-commercial messages. It allows multiple advertisers to communicate from one location, and also with digital technology we've already found in other states and other cities throughout the country that it speeds delivery of emergency information about public safety, and Amber alerts. In Lucas County, Ohio, which is near Toledo, the billboards are tied in with the state information signs on all the Amber alerts and work with the sheriff's offices as well as with the local police departments and they have been very emphatically saying they want digital billboards to be part of the entire metro network.

From a national perspective what we are seeing is that a typical static time in terms of ... and I'll explain what a static message is. It means that a message will remain up for at least between six to eight seconds. That typically is a normal criterion around the country. Then there is a point of time when you will flip, move, and transition to another message. Montana has recommended three seconds on notice. Probably the national average is around between one and two seconds. But once again, that is your call. We would recommend probably two seconds – between one and two seconds but yet keep a minimum of six seconds for a static message.

Once again the advertising messages are not flashing, they are not intermittent, and they are not moving lights. They are static displays much like you see on a painted vinyl unit or a poster unit that is presently out on the highways. I think Montana, the regulations that you have before you, wisely chose to insure that animated features or slow motion videos along with dissolving or scrolling messages are not allowed. We wholeheartedly concur that there

should be no animation or scrolling or full motion video on any of the digital billboards. Once again I'm referring to the full size, full formatted, digital displays that are typically 12 feet by 24 feet where the full entire face is a digital unit.

Your regulations are also very specific to curb abuses and to control the lighting intensity of the digital billboards. In fact, the language, I think you are kind of leading the nation in that respect, subsection R is very similar to actually what our trade association right now is in the middle of suggesting as a national voluntary code for digital lighting intensity. So maybe as Montana goes, so goes the nation in terms of monitoring and making sure the light intensity works and is compatible.

We see digital billboards as being an important tool for businesses especially small local concerns and quite frankly there is a need for an advertising outlet to reach consumers and customers.

Concerning **safety**, a gentleman raised the issue of safety, we are not aware of any research that talks about specifically the issue of traffic safety or driver distraction. Virginia Tech Transportation Institute just recently published a study dealing with a review of billboards in the Charlotte, North Carolina metro area. They have concluded that the billboards, which also included some changeable message copy billboards, did not affect or did not impact the driver behavior patterns either from a non-billboard segment or segments of billboards in them. They compared on-premise signs, other issues throughout the metro area. I'm going to include that study as part of my record if I could please. It is called "Virginia Tech Transportation Institute". The institute, which is one of the premier traffic safety and driver behavior institutes in the United States. They do a lot of work for the Federal Highway Administration and NHTSA, which is the National Highway Traffic Safety Administration. They also did a very comprehensive world-wide search on the whole issue of driver distraction, traffic safety, and their conclusions were that the billboards do not affect driver behavior patterns.

Federal Highways has already gone on record in the past stating that mechanical changes like tri-vision signs do not appear to compromise the safety or the motoring public. That was in 2002 and is published in the Federal Register.

Summary: Outdoor advertising is by its very nature a medium involving changeable messages and signs. Communication is evolving, we are going to the digital expansion and we are having more and more new technologies coming on board. This provides a means and an opportunity for the outdoor advertising industry to be compatible with new technologies. I recommend approval of the regulations as proposed. Thank you very much for the opportunity to attend and participate today.

Elaina Zempel – Proponent

My name is Elaina Zempel. I represent Pondera Regional Port Authority at 702 South Main, Ste. 1, in Conrad, Montana. I am appearing as a proponent of these rules. When I checked in, I would like to take off my opponent sign after reading them just a little better.

I would like to tell you our situation. In Conrad, we are along I-15 coming from the south. The community of Conrad is on a wide exit, meaning you cannot see the city by the time you need to take the exit off the interstate. We have in the past put up billboards or we have re-done billboards in our area to try to pull some of the 1.8 million sedan cars that pass by on I-15. This is a potential for economic development for our community. We feel that if we could tell them that you can get off that interstate and you won't be driving 20 miles before you find a gas station, it would be very important for us.

I would like to add that this is a very good start. We have another small community called Valier. When I-15 went through, Valier had a big billboard along the old highway that advertised it as the shortest route to Glacier Park. That sign, of course, when the interstate was built, was demolished. The community of Valier has suffered some loss of economic impact from cars turning off and being able to access Glacier Park through their community. It would be nice if at some time Valier could recover that sign. Also we do have a sign in town.

In rule number two, it is difficult to fund the construction and the maintenance of signs that advertise event for schools and we do have one of those. So when we can give recognition to those groups that give money for the

maintenance and construction of those signs, it is a great benefit to those and we appreciate the ability to say ‘thank you’ on those signs. Thank you.

Amanda H. Kelly, Judith Basin – not present

Custer County, Montana, Forsyth – not present

Dale Bowman, Power – not present

Tom Campbell, Lolo – not present

David Wickman, Moccasin – not present

Paul & Kathy Custer (inaudible) – not present

Rick McAlmond – Proponent

Good morning Mr. Scheier. My name is Rick McAlmond. I live at 4670 Freedom Drive in Helena, Montana. I’m the Market Manager for Lamar Outdoor Advertising. I’m in support of these rule changes. One thing I feel that is important to reiterate is the fact that on the digital display billboards that we are proposing is that it is a static message and there is no animation, no scrolling, or no movie. So again, I’m in favor of it.

Charlie Hamway, Billings – not present

Gary Temple, Billings – not present

George & Peggy Darraugh, Great Falls – not present

Paul Dennehy – Proponent

Good morning Mr. Scheier. I’m Paul Dennehy. I’m the General Manager at Lamar Advertising. Lamar has a significant investment in the State of Montana with our billboard plan and I’m here to support the rules changes in the regulations to allow variable message signs. The outdoor advertising industry is heavily regulated in our state by federal, state, and local laws. Changeable message signs would allow several advertisers to show their product from the same location thus allowing growth without adding new structures in our state. New technology will allow billboard images to be changed via computer but the key here is that each message is static as has been stated by Myron Laible. There is no moving, no flashing, no exploding messages – the message is static similar to what billboards are now – a static message that changes every six to eight seconds.

This new technology will allow businesses both big and small to use the medium to their full advantage affordably. We believe changeable message signs are safe. We are not aware of any objective studies that show they compromise the safety of the motoring public or any study that shows billboards affect driver behavior. Forty-two of 46 states that have outdoor advertising allow changeable message signs and they have been proven a valuable tool, not only to advertisers, but also to state and local governments with the use of Amber alerts and public safety alerts. Again, I would support the changes as a positive step for the State of Montana. Thank you.

Ron Skoals, Billings – not present

Carrie Lindeman, Great Falls – not present

Debra Allen, Billings – not present

Lindsey Olson, Missoula – not present

Jeff Ferrington, Great Falls – not present

Rick Jones, Billings – not present

Catherine Richter, West Glacier – not present

Sarah Becker, Great Falls – not present

Dawn Ward, Helena – not present

Mark Olson, Missoula – not present

Laurie Ferrington, Great Falls – not present

Rita Christians, Dupuyer – not present

Susan Tanner – not present

Gil Mangels – Proponent

Good morning, my name is Gil Mangels with the Miracle of America Museum in Polson, Montana. I'm in support of the changes. My remarks are probably going to be a little bit general to the importance of signs. I would like to quote from the Kalispell *Daily Interlake*, I don't have a date on that, but Mr. Roger Morse did a study on the condition of Libby, who is having financial problems, had some comments in relationship to signs. He said that, "maybe the Troy area needed to connect the dots to attract passing tourists to stay in the area and improve visitor's first impression. The goal of tourism for a community is to import more money than it exports." He said, "you now have a sign down the road that says Libby 15 miles, well in this area you need a sign that says Libby 4 miles. Decorative signs directing people towards the shopping district or downtown shopping." He lists several examples where there should be signs. "The purpose of highway is to transport people safely from one point to another, signs add to that." And I might add to that I'm not in favor of billboards that advertise alcohol. I realize that could be a moral issue but in Lake County we just lost two more youth from driving while they were intoxicated. Perhaps that is another situation.

Signs improve highway safety because a person knows when to start slowing down in anticipation of an attraction of something they want to go to instead of impulse stopping. I recently was on a trip back to Ohio to pick up some things that a family was donating to the museum, and a friend and I were driving along through the interstate areas where all you could see was trees. We wanted to stop at a grocery store to buy some snacks, and we would pull off at some exit and we couldn't find a grocery store because of all the trees. You couldn't even see the forest for the trees. There were no signs up at all.

Some people refer to Vermont as a model of "no sign" haven. Just a very few years ago I talked with the state Chamber of Commerce and found out some interesting facts. In the eleven years that person had worked with the Chamber, there had been little or no increase in the amount of tourism. Compare that to Montana, who in the year 1991 had a 23% increase in tourism. With farming on the rocks, we are desperate for tourists. We need to stop them; we need to hold them. We have tourists that come in our Museum that say "we barely found you, you need more signs."

Signs serve the public especially the tourists who are unfamiliar with an area. Some signs are an art form and entertaining. In fact, old timers used to look forward to the Burma Shave signs. I realize there are those that it is impact on the scenery, however, our driving here to this meeting or even if you walked if you were wearing shoes or riding a bicycle, had some impact on our environment because all those things had to be made in a factory or freighted in or something like that. For the time being that is all of my remarks. Again, I'm in favor of the proposal.

Laurie Posie – not present

Alma Darling, Polson – not present

Russell County Commissioners – not present

Daniel W. Prebel, CEO Kleen King – not present

Kelley Dennehey, Billings – not present

Greg Peterson, Chemical Mt Company – not present

Susan R.L. Carlson, Billings – not present

Kim Dunn – not present

Joyce Lockery, Billings – not present

Bill South – Proponent

My name is Bill South. I represent Sierra Outdoor Advertising. I support the use of commercial variable message signs in Montana. I see them as being a useful advertising tool that would benefit the state's economy. Thank you.

Jerry Black – Proponent

For the record my name is Jerry Black, a good Irish name. I represent Senate District 14, which is comprised of Toole, Pondera, Liberty, Choteau, and part of Glacier County. I would like to commend the Department of Transportation for these rules they are proposing. I think it answers the needs of many of our small communities and gives them much more flexibility in advertising their businesses or their community, which is so vital to them with the number of tourists that are on our Montana highways. I think this is definitely a step in the right direction.

I have one question on rule one of official signs that "On interstate highways the welcome signs may be erected within five miles of a community." I think this may limit a community like Valier which sits 15 miles off the interstate. I don't know whether you would call that a "welcome to Valier" sign at the junction where the Montana highway connects with Interstate 15 or if it would be a directional sign. But it seems, under this rule, that they would be prohibited from having a sign that would say "the shortest route to Glacier National Park" or whatever they chose to put on it and "welcome to Valier".

Also on Interstate 15 is an example, the community of Shelby has a "welcome to Shelby" sign. They are located probably about six miles south of Shelby. They were unable to find an appropriate site between there and the City of Shelby to erect the sign and that was the only appropriate site available. It might be considered to have an exception that if a site were unavailable that they may locate on a site closest to that five mile limit. That might give them a little bit more leeway or in this case, they would probably have to tear down and eliminate that sign, which they've gone to a considerable expense to put up. There are a few other communities like that where you go through canyons or along river where you can't really find a close appropriate location within the five-mile zone. That was my only real comment.

Again, I just want to congratulate the Department of Transportation to responding to the public like you have and making these rules work for everyone's best interest. Thank you.

Bryan Haney – Proponent

Good morning. My name is Bryan Haney. I'm with Montana Sign Company in Havre, Montana. I'm just here to support the rule change. Thank you.

Jim Carpita – Proponent

Good morning. My name is Jim Carpita. I'm the Site Manager for the Montana Heritage Commission in Virginia City and Nevada City. I'm here as a proponent of these modifications to the regulations. One of our biggest problems with Virginia City and Nevada City is getting people to come through and stop. These appear to give us that flexibility of adding signage and directional opportunities for very unique and wonderful Montana heritage site. Thank you.

Roxanne Rickman – Proponent

My name is Roxanne Rickman, 1207 Williams Street in Helena, Montana. I'm here representing Montana Sign Works. I just want to say that we are a proponent for this rule change. I think rule number one with the official signs is extremely important to the promotion of tourism in our state and the recognition of what is available to tourists as they are driving on the interstate. The "thank you" messages for the schools is very, very important for them to help attract sponsors to help them get these signs put in to advertise all the events – the musical events, the sporting events, and everything.

We are in favor of the static changeable copy on billboards. This is from me personally as a parent. I think it is extremely important that our state steps up into the Amber alert system. I had small children at home until recently and some day will have small grandchildren and I think it is extremely important that we get these messages out there as quickly as possible. It is a proven thing that the faster it gets out there, the better chance they have of rescuing these children and I think it is extremely important that we have that. Thank you.

Dan Defries – Proponent

My name is Dan Defries. I represent Daktronics Inc. from Brookings, South Dakota. I have an office here in Butte, Montana. We fully support responsible sign usage individual message centers. For those of you who not familiar with Daktronics, we have signs at the Great Falls High School, Town Pumps, Rock Hand Hardware here in Helena, Suds Hut, Carroll College and Pier One, they're are all our message centers. When it comes to the message centers that would detract from the traffic or cause problems, we are dead against it. Every one of our signs that are manufactured have light sensors on them so they are dimmed at night conditions so it does not distract. Flashing or anything that would be run on a sign that distracts, again we are dead against. We support the resolutions you have here and I think it is a good way to go. Thank you.

Brian Fox – Proponent

My name is Brian Fox. I'm here representing Inside Advertising. We own and operate a number of billboards in the State of Montana. We support the changes and modifications in the rules. I think the CMS language is extremely valuable to the state and could be a huge benefit in the Amber alert system and safety along the highways.

Rick Kitto – Proponent

My name is Rick Kitto with Art Outdoor Advertising. I support the rule changes. I think it is very important that Montana stay up with the other states in the Union and stay up into the 21st century and use technology that is available to us. I not only feel like it would make a nice change for very nice reader boards but also a good chance for a public service messages to be readily available to the traveling public.

(Jim Scheier) Does the department wish to respond to any of the comments at this time?

(Nick Rotering) No, I'll hold my comments 'til after.

(Jim Scheier) Let's move ahead to the opponents of the proposed rule changes.

Opponents

Jo Ann Ruby, Missoula – not present

Tara McDonald, Missoula – not present

Sue Seebrook, Missoula – not present

Gwendall and Barbara Beardsley, Missoula – not present

Ann Hoyle, Missoula – not present

Harry Seabert, Missoula – not present

SAVE, Missoula – testified later in hearing

Willie & Jane Worthy, Missoula – not present

Patsy Coleman, Lincoln – not present

Wayne B. Worthington, Kalispell – not present

Howard Reinhardt – not present

Robert Waktel, Missoula – not present

Charles Horejsi, Missoula – not present

Tom Jentz, Kalispell – not present

Michelle Wilcox, Billings – not present

Phyllis Bookbinder – Opponent

My name is Phyllis Bookbinder. I live at 1135 Kathryn Lane in Corvallis, Montana. I have several handouts that help prove my points. I'm here representing myself. The billboard industry has been pushing their way into Montana for years. I have testified against them several times at both the local and state level. They bring with them the ugliest form of advertising and it threatens our beautiful state. Montana once known for its wide open spaces, scenic drives, and slow paced lifestyle, is rapidly losing what makes it the last best place. Large intruding billboards now ruin some of our most scenic views.

In Ravalli County where I live, we were voted by Scenic America as having one of the most endangered scenic drives. We were at risk of losing one of our greatest joys, the view of the pristine snow capped Bitterroot Mountains as you drive through the valley. We were losing it because the billboard industry had discovered the Bitterroot and rapidly put up several signs before we could stop them and we did stop them with our own local laws. They have been doing this all over the state. The problem is 1) they ruin scenic vistas, 2) they take away some of the pleasure tourists have when they visit, and the tourism industry is one of our leading economic opportunities.

They are expensive to advertise on, so most small businesses can't compete against national chains that have the finances to advertise so they are not friendly to small businesses. They reduce the quality of life for any close-by neighbors. They contribute to light pollution and diminish the pleasure of looking at the night sky, which is also a tourism draw. They distract motorists and increase the risk for traffic accidents. They change the character of a town and ruin the quaint-old western atmosphere.

All across Montana, one county after another has made it illegal for billboard industries to put up any more signs. They have amortized them out to get rid of them. Why? Because they are ugly. They are considered blight. Many Montana towns like Billings, Laurel, Hamilton, and Missoula have banned additional billboards along with several counties. They have joined the national trend with Alaska, Vermont, Maine, and Hawaii that have completely banned new billboards. These states, even without billboards, enjoy a high rate of successful tourism. These tourists find the motels and restaurants, even the ones that Ma and Pa own. If you pay attention to these local and national trends, trends set by the people who live in the communities where billboards are banned, these trends tell you what is in the heart of the people. They don't want them as they are and they won't want them as bright obnoxious intruders.

Should we let the billboard industry come in and change signs to be electronic? Absolutely not! Huge brightly lit motion signs slap Montana's lifestyle right in the face. These signs by their very nature are safety hazards. They are designed to attract the eye of the motorists up and away from the road. These signs by their very nature are bright, rapidly changing levels of light. How many senior drivers are you going to put at risk for night blindness as they pass by a sign and then can't see afterwards very well. These signs by their very nature will be displaying interesting

graphics; those that turn the heads of new teenage drivers. How many teenagers die in a car that flipped in ditch because they over corrected after they drifted out of their lane? Lamar says that these static signs are going to only change every two to six seconds; that is a fast flashing sign.

You will see in my handouts that some places that had electronic billboards have placed a moratorium on any new ones and have had some taken down. In my research right here “Seattle Pulls the Plug on Video Billboards” because they are a traffic hazard. You will also see in my handouts there is research – one conducted in Wisconsin on the effect of traffic safety. One study showed the rate of increases for sideswipes increased 8%. The rate of increases for rear-end crashes was up 21%. Another study in California found that roads segments with billboards experienced significantly more crashes than segments without. A Massachusetts Outdoor Advertising Board found a 10% difference in traffic safety near an electronic billboard and revoked the license for the sign.

I caution you. Now that you have been informed and warned, if you allow electronic billboards, you could be held liable. We do not need to join other states and make the same mistakes they did. These signs don’t belong in Montana or anywhere else. Please vote no. Thank you.

Chris Fletcher, Huson – not present

Harold Frawn, Missoula – not present

Paul Whitting, Billings – not present

Paula B. Clark, Stevensville – not present

John Angden – Opponent

My name is Henry Busey. I have a letter here from the Honorable John Angden, who is the Mayor of the City of Missoula. It has been submitted.

We in Missoula are concerned about the Montana Department of Transportation proposal to legalize electronic billboards. Missoulians are proud of our attractive city, the scenic mountains, extensive landscaping both in business and residential areas, and the architecture of our neighborhoods. I don’t believe electronic billboards enhance our attractiveness.

Safety is also a significant concern for Missoulians. Reserve Street is one of the busiest roads in Montana with the highest accident rate in Missoula and a prime location for these expensive, distracting billboards based on audience numbers. I and others worry that public safety may be compromised by these advertising tools. Because I’m unaware of any significant study of the public safety consequences of these devices, I am reluctant to endorse their proliferation and would encourage research to give us reliable data on which to judge the merits of opening the door to these signs.

Thank you for inviting comments.

Sincerely,

John Angden
Mayor of Missoula

John Phelps, Whitefish – not present

Tawny Perriman, Missoula – not present

Jan Metsmaker, Whitefish – not present

Yokina & Clause Heinrich – not present

Darda Wilson, Whitefish – not present

Joan Vetter Ehrenberg, Whitefish – not present

Sara Busey – Opponent

Mr. Scheier, my name is Sara Busey, 75 Brookside, Missoula, Montana. I'm speaking on behalf of our organization Save America's Visual Environment (SAVE)". Since 1994, we have been working to preserve and protect the scenic resources of Missoula County. Since signs have a profound effect on what Montanans and tourists see of our cities and our landscapes, we are very sensitive to any changes concerning sign regulation. SAVE is opposed to appreciation messages on electronic reader boards. The purpose of an appreciation sign is to let the community know of a donor's generosity. Here is an example of an appreciation sign that is a small sign underneath the reader board here at the Missoula County Fairgrounds (referring to graphic). You can also see on the reader board a sign that says "thank you Quality Supply." Quality Supply is an off-premise business and therefore this qualifies this as an off-premise sign and according to FHWA and Montana law, those are not allowed on electronic reader boards.

Most organizations that receive donations from generous people usually acknowledge that with a plaque they hang on the wall or a certificate or a notice or ad in the newspaper – those are our traditional ways for noticing generosity. This also is another reader board that has an off-premise business on it, "thanks to the Book Store at the University of Montana" (showing graphic). The way the rules are written now, these signs would be legal all over the state of Montana on every on-premise sign. They would be able to have large permanent appreciation signs and also thanks to off-business businesses.

Would MDT legal staff and the Outdoor Advertising Division have the staff available to monitor what is proposed? They are proposing to allow these "thanks to the bookstore" to be run for 20 minutes during a 14 day period. Do they have the staff to do this? In our point of view, this is nothing but an enforcement nightmare and you can't expect the local law enforcement law enforcement officers to monitor this. SAVE has had a long history of enforcement issues with the department. Since 1998, we have notified them of violations at the Fairgrounds, we've notified them since 2003 of the violations on the Adams Center Sign, and there is nothing that has happened until we notified the Federal Highway Administration. The Adams Center sign is still unresolved and as you can see from these pictures they are examples of the kind of motion that takes place on these signs – they scroll, they fade, they explode, they turn 90 degrees, all of which is illegal action under current law.

And last October, because electronic signs are what they are, all it takes is the flip of a switch and they change the message. The message changed from "thanks Fuddruckers" in October to "Fuddruckers now accepts due dollars", which is blatant advertising. Are our contributions to businesses donations or are they advertising? Red's Towing and Quality Supply each put up \$10,000 to put up the Fairground sign, and this is the contract they signed with the Fairgrounds:

Sponsor, that is Red's Towing, will receive one hour per day for five years of their name on the reader board on the rotating time cycle between 7 a.m. and 8 p.m. with the message "thanks Red's Towing".

It reads to me more like an advertising contract. If these messages are allowed, how will citizens or MDT know when a violation of advertising occurs? There is no definition of advertising in the proposed rules. We would like to see that happen.

Mr. Scheier, SAVE is also opposed to legalizing commercial electronic message board signs. It was just last year, and contrary to what Mr. Rotering said, they do make changes often in the outdoor advertising rules and one happened just last year which prohibited electronic billboards. And now they are coming back and want to allow them. That rule last year was based on Montana law – "signs that contain, include or are illuminated by a flashing intermittent light or lights are prohibited." SAVE has protested the change in this definition. The only way you can allow commercial electronic signs now is to change the definition of "moving". If a message doesn't change more often than every six seconds, it's not moving. That is the only way they can make this change.

MDT has done so much to increase traffic safety in this state. Our state is full of long, long mileage with people traveling at probably too high speeds. So in 1999 we have to realize that vehicle crashes were the leading cause of injury deaths in the United States. In 2004, one person was killed every 12 minutes in an accident involving a vehicle. We applaud MDT's efforts to increase traffic safety. One of the people who talked from Lamar mentioned the Virginia Tech study on transportation safety, I believe this was funded by the outdoor advertising industry and although it looked at 30 billboards, only 10% of those were electronic billboards. They concluded their study by saying that one limitation of this study was that there were few electronic billboards along the route, so no conclusions can be drawn regarding driver behavior and the presence of this type of billboard. The conclusion that this study said that there were no increased traffics because of billboards was essentially based on the standard static billboard.

We looked at four independent studies about safety. Two of them were by the Federal Highway Administration. The 1980 study looked at one-premise electronic reader boards. The 2001 FHWA study was just a study of the literature regarding electronic billboards. Another one already mentioned by Phyllis, was the Wisconsin DOT study of electronic billboards and highway safety. Then there was another one that the government of Scotland did on electronic billboards. Every single one of these studies said that it is the evidence of electronic billboards causing traffic accidents is inconclusive. The evidence of them not causing traffic accidents is inconclusive. Every single one of them said there needs to be more studies on this issue.

I'd like to just read quickly, if I may, a quote from the 2001 Federal Highway Administration study, "motion is a highly likely candidate for an effective attention grabber. The motion component of an electronic billboard may be more of a distraction than message content or pictorial arrangement. If a driver wants to see the entire movement for some inherent interest, then the driver will focus more on the motion display and less on the driving task." Those are reputable independent studies. However, I'd like to mention a couple of studies by the outdoor advertising industry itself. A study along Highway 101 in Silicone Valley found that 67% of the motorists noticed one billboard and that was the electronic billboard versus only 12% that noticed a static one. So in their promotion of electronic billboards they are trying to show people, yes, that more people are distracted by electronic billboards than standard billboards.

Besides the safety issue, we have some other concerns with electronic billboards. Who wants them? The Institute of Tourism and Recreation Research at the University of Montana asked people who didn't live in Montana about what was most helpful when they were here. Only 2% found that business billboards were most helpful in their touring around the state and only 10% actually used them at all. Triple AAA in Montana asked their members about billboards and 65% said they wanted to see fewer. Those of you who read the paper yesterday in the Missoulian read about PPL Montana's survey about quality of life in Montana. Whether you are a newcomer to Montana or have lived here a long time, both of those groups, over 95% said they strongly agree that the natural beauty of the state is an important reason for deciding to live here. Let's not block out the scenery by billboards.

This one I'd like to mention – this is a promo from Electro Media who sells billboards (referring to graphic). The top billboard you will notice there is a clock that is providing public service information. Under the rules, would this billboard be allowed to flash? Under the rules no, but under Montana state law, if you provide public service information like time, temperature, and weather, you can flash.

Finally, I'd like to take notice about the public meeting announcement that was in the newspapers for this hearing today. If there are not a lot of people here today that object to the commercial electronic billboards, it could be because of the misinformation in this public announcement. It was inaccurate, inadequate, and not timely. First of all, it said that they were going to discuss changes about the changeable message signs. The word "commercial, electronic, billboard" was not mentioned. Many people may have thought it was just that little reader board you go out and put the new letters on. The other thing it said is that the changes are allowing communities to have "welcome to" signs. The rules already allow communities to have "welcome to" signs. They can also list their services and their attractions. It was biased because it mentioned that the electronic billboards would be able to have Amber alerts. I talked with Greg McDonald who is with Montana Broadcasters Association and he said they helped the Justice Department set up this Amber alert. He said as soon as an Amber alert is ok'd it immediately goes to every radio and television station in the state. And you've only had three Amber alerts in three years. Why do we need an electronic billboard to announce a once a year event that reaches a very limited audience? On top of

that, the FHWA memo said that “we noticed that commercial billboards are not always the most effective or safest method to disseminate information related to child abductions.” Finally, the notice in the Missoulian was published 27 days not the required 30 days prior to a public hearing.

SAVE, in conclusion urges the Transportation Commission to approve small permanent appreciation plaques on on-premise signs but to oppose appreciation messages on the electronic reader boards, legalizing electronic billboards and oppose larger and ranch and rural directional signs. Thank you.

Richard Munger – Opponent

Mr. Scheier, my name is Richard Munger. I reside in Montana City, Montana. I’m not in total opposition to these proposed rules. There is one area that I would comment on. I’m a former employee of this department as most of these folks know and I currently have an independent contract working for the Logo Signs of America as many of these people know. But the comments I make today are mine and do not represent the company Logo Signs of America.

Under rule one of the official signs, it provides for “welcome to” signs along Montana’s controlled highways including, under subsection (6), on the Interstate Highway System. Under the reasoning for these “welcome to” signs to be allowed, the department said that many communities do not have the ability to be recognized because folks don’t know they are there. I take some exception to that particularly as it relates to the Interstate Highway System. In my opinion, virtually every community that is along the Interstate Highway System is so noted because there is an interchange. As an example, going south from here to Butte on I-15 you have Montana City, Clancy, Jefferson City, Boulder, and there are always signs a mile or so ahead that say “Montana City, exit such and such”. So the only point I’m making there is that I don’t think that the reasoning that those communities are not known by the traveling public on the Interstate Highway System is valid. On the Primary Highway System, I acknowledge and I agree that “welcome to” signs should be allowed for the communities that are off of those highways.

The other problem I have with that is talking about a five miles from the community, and if we’re talking about signs that are under the control of outdoor advertising, they have to be on private property and not within the right-of-way, which means they are quite a ways off the traveled way on the Interstate Highway System, in many cases 100 or more feet to the right-of-way boundaries which leads me to think that you have to build a very large sign saying “Welcome to Montana City” for the traveling public that’s going down that highway at 75 to 80 miles per hour. So I just question the need to allow “welcome to” community signs on the Interstate Highway System. I think it flies in the face of the intent of the Highway Beautification Act. So I would recommend that the department take out that subsection (6) to allow those kinds of signs on the Interstate System.

The only other comment I have is regarding, it says page 281 on the top, it is on rule 18-6-242 talking about ranch, rural and directional signs, under subsection (1), it says “directional signs are allowed at intersecting roadways that enter into the main traveled way and may only be erected along the Federal Primary Highway System.” I’m not sure that is really what the department intends. Several years ago, there was a re-designation of Montana’s highways into what they call the National Highway System or the NHS System, which in Montana includes the entire Interstate Highway System and a portion of what was formerly known as the Primary Highway System and also in some cases part of the Secondary Highway System. I was told by Federal Highways years ago, any course in the National Highway System is effectively to be controlled for outdoor advertising purposes. So my only point there is I think they ought to change that language to say “the two-lane National Highway System or remaining Primary Highway System” so they cover everything. I think maybe the department should review all of the rules under Outdoor Advertising Control to make sure that the system under the new NHS System is recognized accordingly. Thank you.

Sharon Milanos – Opponent

Mr. Scheier, I’m Sharon Milanos. I’m a resident of Florence, Montana. As a community member, I’m opposed to the rule changes. I’m a relative new Montana resident. I moved to Florence from California several years ago to enjoy a slower lifestyle and also to enjoy the scenic beauty of the Bitterroot Valley. I’ve lived in various cities and towns throughout the United States but I have found no other location as beautiful as the Bitterroot Valley. When I first moved to Florence I was little dismayed at first to see the number of billboards on Hwy 93 from Florence

south to Hamilton. The billboards I found to be an intrusion and detraction to the exquisite beauty of the Bitterroot Valley.

Many of California's highways have billboard after billboard scattered along the highways – electronic billboards being most popular. I feel that electronic billboards pose a hazard or safety concern. When they were first introduced in California I found myself, along with other motorists, dazzled with all the blinking lights wanting to read all the new information racing across the billboard. But who has time to watch the road and the motorist in front of me because I was reading the latest billboard news?

As a professional woman I do understand business development but I urge you to protect Montana's natural beauty, lifestyle and our struggling small businesses and I urge you to vote no on the rule changes. Thank you.

Robin Hamilton – Opponent

For the record, my name is Robin Hamilton, House District 92 out of Missoula. I'm also a retired educator and small business owner. I appreciate the need to advertise. It is nice to keep up with technology. I envision a time in the House and Senate where we all have laptops instead of a pile of paper this big. But I'm not sure I want to keep up with the nation in advertising. I know I don't want to lead the nation in advertising. I'd like to lead the nation in funding education but we are about 49th. The details itemized by people like Sara Busey tell me that this is a change so big that I don't think we are quite ready for it. I appreciate all the work that's gone into it. I appreciate all the safeguards I see in the bill. But there are still too many loopholes for abuses and dangers. The term "static" as used in this proposal is Orwellian. Six seconds is not static. Static is 10 years.

As a legislator, I'm concerned about a change this significant with the potentials that this has. I don't think we've looked at enough details, even though as a business owner I understand the need to advertise. I guess I'm not convinced that signs will solve our economic problems as you've heard other people testify. Tourism will be a big part of our business but we can advertise Montana in a lot of ways besides billboards. The Internet is probably our biggest single way to advertise and we can show beautiful Montana without billboards. People tune into the Internet all the time; that's how we show how beautiful Montana is.

In addition, I'd like to talk about how administrative rules take place. Our folks do a great job. People making administrative rules work long and hard and I appreciate their efforts. I was so impressed in this last session of the work behind the scenes. I compliment them. But in some cases, they go beyond the intent of the Legislature. Now we had a poll of the legislators after this last session. We thought that the rules violated our intent. I asked one my colleagues who is more experienced, "what happens now?" And he said, "I don't know, we've never done this." So we all figured out pretty quickly and we took a poll and they had, in fact, to go back and change their proposed rules because it did in fact violate the intent according to a majority of the legislators. I think that this change and the significance of this change is one that might make us have this discussion again. It is a significant change; it is not a small change in Rule. I encourage you not to recommend a wholesale approval of these changes because if you do I think it will make me and my fellow legislators have that whole discussion again. Thanks again for your careful attention to all the details of these important changes.

Anna Vee Brandborg – Opponent

Mr. Scheier, I'm Anna Vee Brandborg. I live in Hamilton and I've lived there that last 20 years and before that I grew up in Montana but spent 30 years in Washington D.C. and returned to Montana as a retiree. I came this morning because I do not want the electronic billboards legalized. First of all, I think most billboards are too large and they are disruptive of the beauty of the Montana landscape. Tourists can find what they need without a billboard if they are really working at it. But nowadays when I'm driving, I have to be very careful and pay attention to traffic more than before. A billboard with flashing lights would be especially distracting and I need to be very careful and observant, and as you know, Montana's fast becoming a retirement state and we Montana elders who drive – with all the problems that go with age, your sight has some problems occasionally and particularly at night. We need to be particularly attentive to traffic and to the necessary DOT signage to be sure that we get where we are going. Flashing lights, whether they are an advertisement or a state sign, are simply dangerous for older people as well as younger ones; but particularly with older ones. I do urge you to vote no.

Cathleen Coleman – Opponent

Good morning, my name is Cathleen Coleman. I live in Manhattan, Montana. I'm the President of the Chamber there and I'm also a member of the Business Development Committee, but I am speaking my personal views this morning. My predecessors very eloquently expressed my thoughts and feelings but let me just add that I would not like to see the intrinsic beauty of Montana disrupted by numerous electronic signs all over the state. I think there is a real concern about light pollution that needs to be addressed. I believe that advertising can be just as, if not more, effective without electronics. In fact, paper billboards are generally far less obnoxious. I do drive to northern California several times a year, my least favorite part of the drive is through Reno simply because of the many very bright obnoxious reader boards and these are not just flashing lights these are reader boards as well. So I would just like to add that I am against the proposed changes.

Lane Coddington – Opponent

Mr. Scheier, thank you for having us today. My name is Lane Coddington and I'm from Missoula. Electronic billboards. I think that allowing electronic billboards into Montana is a bad idea. It is a bad idea for a number of reasons. It might be enough just to say they are as ugly as all get out; that ought to be enough of a reason just to keep them out of Montana, our beautiful state. It makes no sense to allow them here. More importantly, electronic billboards are unsafe. Now the Department of Transportation has spent a great deal of time and effort to design and build safe highways and roads. They design wide roads with good drainage, shoulders, striping, and signs. They try to get us drive safely by encouraging us to use seatbelts, by keeping us from driving and drinking, even discouraging us from talking on cell phones while driving. So what are we doing thinking about putting up television sets along side the highway? It makes no sense. Don't try and tell me that electronic billboards are not distracting; they are designed to attract to your attention. That is there whole purpose. It is obvious they will attract your attention more than a static billboard will. They are attracting your attention away from driving your car. I'm sorry, it just makes no sense.

It is interesting there aren't many people in this state that want these things. Most of them are probably sitting in this room. We don't have to survey everybody, just think about asking your neighbors, "what's your idea about putting up a large television screen next to the highway?" They are going to say you're nuts. This is a no brainer. Nobody wants these things. Senator Burns says we are a state of common sense people, and he's right, we do have a lot of common sense and this makes no sense at all. It makes no sense to put large televisions along side our highways which will distract us from driving our cars safely. Please don't allow electronic billboards into Montana.

Connie Boucher – Opponent

My name is Connie Boucher. I'm from Manhattan, Montana. I'm a native Montanan and I really enjoy driving down the highway without the intrusions of large billboards. Electronic billboards, in my opinion, are an extremely bad idea. I have two small children and I would love for them to grow up driving down the highway looking at the buffalo, looking at the mountains, looking at the trees and the rivers, and commenting on those or rather than commenting on the Lucky Lil's signs of the world. I am a business person and I do believe in advertising, I just think there are a lot of other ways to advertise in a much more effective way and a way that is not offensive to the majority of the population, in my opinion, of the state of Montana. Thank you.

(Jim Scheier) Does anyone else want to testify as an opponent? Does anyone want to testify without classifying yourself as either an opponent or proponent, but give informational testimony? This is your opportunity.

Informational testimony

Pat Hurley – Montana Department of Transportation

Mr. Scheier, my name is Pat Hurley. I'm the Administrative Officer and Coordinator for the Outdoor Advertising Control Program for the State of Montana. I'm neither for nor against these regulations. I simply work at the pleasure of the Director of the Department of Transportation to regulate the law regarding these issues. But I do want to state some facts for the record. I've done a lot of research over the last few months on the pros and cons of digital reader boards, CMS boards, tri-vision boards, or whatever. I've got some facts here that we I think we need to put down for the record.

1. 41 of 46 states with billboards allow changeable message technology. As technologies increase and continue, they seem to be outputting government regulations. The trend line is moving toward nearly in all states with billboards to accommodate changeable message signs. Government regulators are continuing the trend of embracing technology advances in the outdoor advertising industry. The Federal Highway Administration in 1996, in their policy interpretation, granted the states the flexibility to allow technological changes for the standardized outdoor industry.
2. The federal government says changeable message signs are safe. "Tri-vision signs do not appear to compromise safety of the motoring public," said FHWA in approving the change in Oregon's federal state statute allowing changeable message signs.
3. Since the federal government decided to allow flexibility to states on changeable message signs in 1996, most states have opted to use the new technology.
4. Billboards remain heavily regulated. Federal policy and state policy continues to ban flashing intermediate or moving lights. Changeable messages are allowed only on conforming billboards.
5. Traffic safety experts have studied the relationship between outdoor advertising and traffic accidents since 1950 finding no scientific or authoritative evidence that billboards are linked to traffic accidents.
6. Federal and state courts have concluded that there is no evidence that billboards impair traffic safety.
7. The U.S. Department of Transportation, state transportation agencies, property and casualty companies, statistics on fatal accidents indicate no correlation between billboards and traffic accidents.
8. A sampling of local law enforcement agencies has found no evidence that driver accidents are caused by billboards.
9. Numerous state transportation agencies have constructed their own billboards and message centers to provide varying information for the motoring public.
10. Studies indicate that billboards can improve conditions along the highway. Safety experts indicate that the presence of advertising signs in rural areas are valuable to reducing a driver's boredom which they believe is a positive contribution to highway safety.
11. Finally, one of the other studies I looked at was a survey of drivers and road users showed that the lighting provided by billboards provided security and visibility for many motorists.

Gil Mangels

My name is Gil Mangels, Miracle of American Museum, Polson, Montana. When you consider what testimony has been given today, I hope you will realize that we have two separate issues here I believe. Most of the testimony has been against electronic billboards. I hope that when you make that decision that you can draw a division on perhaps on doing some more research or rewriting or adjusting regulations and not throw out the whole package.

I was in law enforcement for five years. One of those being a year at West Point Military Academy in New York, Traffic Control Security, and when you have an Army Navy game at the Point, it is chaos. Everyone wants to know where to go and we just had to keep waving them on – straight ahead, straight ahead. You can't be stopping traffic when you've got a back-up five miles down the road. So it is important that people know where they are going. I think we've all seen people reading roadmaps on their steering wheel and perhaps some of us have been guilty of that. If you haven't you may have been talking on cell phone while driving.

I'm one that the blue lights on automobiles bother me in the day time, so I'm very light sensitive and lights would bother me. But I do think that proper signage is a very important safety issue. We have new roads going on in Lake County now – Hwy 93 which has been one of the worst highways in the nation for safety and we have certain engineers and I don't know where they went to school, but the pull offs... I try and set my cruise control, when I'm driving a rig that has cruise control, to the speed limit and I try and obey that as much as I can. I get eighteen-wheelers behind me, I get other people behind me, and I want to pull off and let them pass. On a freeway, they can do that without my pulling off. But on Hwy 93, whether it be a super-two that some of the people want, or currently, you cannot make a turn into a pull-off going close to the speed limit without causing distress behind you. If you slow down to pull off because you may be familiar and you know there is a pull-off ahead, if you try and slow down, you are going to back up traffic and cause some reactions behind you. So it is pretty important. But I think DOT, your department could work better with the engineers and help them realize that deceleration lanes and so

forth – some of it is not in your power. We have engineers on the reservation that don't want motor homes, trailers, and trucks to pull off to get off of the road. If you look at the outlet where you first see Flathead Lake, in my opinion it is one of the most beautiful spots in the state where you first see Flathead Lake and the islands and the narrows out there, they have ruined that. Next time you go by, try and pull into there. Before it was a gradual pull off, you could basically pull off anywhere for several hundred feet. Now you have a real narrow pull-off. So I guess the point I'm making is that people need to know what's ahead so they can have reaction time to slow down. So please don't throw the whole package out if you vote against electronic billboards.

Phyllis Bookbinder

I have just a couple more thoughts in reaction to the gentleman that just spoke. I know the drive he is talking about when you come up over the hill and you see what used to be a beautiful vista of Flathead Lake. Well, part of what ruined it is the new big billboards that are right there. Just so you know. It has been ruined by billboards.

I have a request too that if your committee decides they are going to grant the billboard industry all their wishes, that you don't do that on behalf of the whole state of Montana, that you allow each county to retain their power over their own signage; that if Ravalli County or Missoula County decides that they don't want electronic billboards that you allow the people to retain their rights and power at the local level.

(Jim Scheier) Again, the final decision on this proposal will be made by the Transportation Commission.

(Phyllis Bookbinder) I'm asking that you include a clause that allows local municipalities to make their own decisions.

Sara Busey

I just wanted to let you know that almost any city and town in Montana does not have any regulations in place about electronic billboards. And so it is a wide-open field. Even Missoula regulations don't prohibit it.

Closing

Jim Scheier: As I said earlier, you still have until 5 p.m. today to submit written comments and if you have a copy of the *Notice of Hearing* and you look at paragraph five that describes the process – you can submit them in person or you can mail them. If you mail them, they are going to be late. You can e-mail them to Mr. Hurley at the address in that paragraph. That concludes today's hearing. Thank you very much.

Agenda item: 02

Staff person handling: Sandra Straehl – Rail, Transit & Planning Administrator

Date/location: May 25, 2006 in Helena MT

Item: **Wetland credit purchase**

Selkirk wetland mitigation site

Background

MDT is currently working with ADC Services, Inc. and landowner Richard Moe to purchase 50 acres of completed wetland credit acres. The site is located approximately 8 miles west of Two Dot and specifically makes up the majority of the northeast quarter of Section 9, Township 8 North, Range 12 East in Wheatland County within Watershed #10 – Musselshell River Basin.

The proposed site is located directly adjacent to the *Wheatland County East* project along US Highway 12 and across from Montana Fish, Wildlife and Parks Selkirk fishing access site. The site was inspected by the US Army Corps of Engineers on March 24, 2006 and was approved as a potential wetland restoration site for wetland impacts in Watershed #10 – Musselshell River Basin.

ADC Services, Inc. and Mr. Richard Moe are responsible for all aspects of the wetland mitigation project including such activities as: development of a wetland design, construction of the wetland site, obtaining Corps approval for the mitigation crediting from the site and long-term maintenance and management of the wetland easement area.

The total cost estimate for the project is \$1,140,000 consisting of \$1,125,000 for the purchase of 50 wetland credit acres at an average cost of \$22,500 per acre and \$15,000 for preliminary engineering for MDT to conduct the legal review of agreements and conservation easements and for Environmental Services to prepare the environmental documentation.

The proposed purchase of wetland credits will assist in mitigating impacts associated with several proposed reconstruction projects in the Billings and Butte Districts. Projects that may be mitigated by these projects include:

UP#	Project Name	Estimated # Acres to be Mitigated	Fund Prefix
4889	Wheatland County Line East	5*	STPP
4075	Shawmut West	20*	NH
4803	Checkerboard to Martinsdale	13.50*	STPP

**The actual number of acres needed for mitigation will vary depending on when the project is developed in comparison to when the Highway projects are Let to construction and how closely the wetlands developed as mitigation resemble the wetlands that are impacted.*

Watershed #10 has been an extremely difficult area to locate potential wetland mitigation sites due to the lack of water availability and landowners willing to provide water rights for wetland development. Any remaining wetland credits will be banked for future projects.

Summary

It is important for MDT to pursue wetland projects ahead of roadway projects. Basically, if the mitigation is not in place at the time of the project construction, the ratio for mitigating increases. There are a number of other criteria that affect mitigation ratios, but having mitigation in place prior to impact will be required in almost all cases from this point forward. By mitigating these sites now, it will allow the department to bank some wetland mitigation credits that could be used in a cost effective way on future projects.

Staff recommendations

Staff recommends the commission approve the above project to the program.

Notes/discussion**Commission action**

Agenda item: 03

Staff person handling: Sandra Straehl – Rail, Transit & Planning Administrator

Date/location: May 25, 2006 in Helena MT

Item: **Culvert replacement**

Culvert-NE of Miles City-Glendive District

Background

MDT is requesting commission approval to replace an existing culvert on I-94 located at RP 141.74 in the Glendive District.

The existing culvert, located on I-94E at RP 141.74, has a bow in it and is showing signs of movement. The replacement pipe will be similar in size to the existing pipe. The project will be tied to the *Miles City E&W* (UPN 5916) overlay project for construction.

MDT proposes using Interstate Maintenance (IM) funds for the project. The proposed project's total estimated cost is \$565,000, consisting of \$15,000 for preliminary engineering, \$50,000 for construction engineering and \$500,000 for construction.

To maintain fiscal constraint for the program, the Glendive District proposes to move the *Fallon-NE* project (UPN # 5719) from FY 2007 into FY 2008.

Staff recommendations

Staff recommends the commission approve adding the above projects to the respective programs.

Notes/discussion

Commission action

Agenda item: 04

Staff person handling: Sandra Straehl – Rail, Transit & Planning Administrator

Date/location: May 25, 2006 in Helena MT

Item: **Adding mileage to the state maintenance system**

Shiloh Road-Zoo Drive – Billings

Background

Per MCA 60-2-128, “the commission shall designate the public highways that are to be included on the state maintenance system.”

Since the opening of the Shiloh interchange in 2000, a verbal agreement between Yellowstone County and Billings Maintenance has been in place for MDT to maintain a section of Shiloh Road between the intersection of Zoo Drive and the entrance to Zoo Montana (U-1031, RP 4.298 to RP 4.53, total of 0.235 miles). Billings Maintenance must travel over this segment of road to get to the section of Shiloh Road (RP 4.533 to RP 5.352) that is currently on the state maintenance system.

The city of Billings and the county have requested that MDT continue to maintain this segment of road. The maintenance administrator and MDT’s deputy director have verbally approved placing it (U-1031, RP 4.298 to RP 4.533) on the state maintenance system.

Summary

It is necessary for MDT to travel over the proposed addition of roadway (RP 4.298 to RP 4.533) to get from one state-maintained route to another. MDT has been maintaining this segment since the opening of the Shiloh interchange. The proposal is to add the segment of road on U-1031 from RP 4.298 to RP 4.533 to the existing state-maintained portion of Shiloh Road. If this action is approved, the state-maintained portion of U-1031 will be from RP 4.298 to RP 5.352, for a total of 1.006 miles.

	<i>Beginning RP</i>	<i>Ending RP</i>	<i>Total miles</i>
Proposed addition	RP 4.298	RP 4.533	0.235
Existing Shiloh Road (U-1031) on state maintenance system	RP 4.533	RP 5.352	0.771
Proposed state-maintained portion of Shiloh Rd	RP 4.298	RP 5.352	1.006

Staff recommendations

Staff recommends that the commission approve the addition of the segment of road on U-1031 from RP 4.298 to RP 4.533 to the state maintenance system.

Notes/discussion

Commission action

Agenda item: 05

Staff person handling: Sandra Straehl – Rail, Transit & Planning Administrator

Date/location: May 25, 2006 in Helena, MT

Item: **CMAQ project – Missoula**
Madison Bridge Trail Project

Background

Congestion Mitigation and Air Quality (CMAQ) funds are used to finance transportation projects and programs to help meet the requirements of the Clean Air Act. The Missoula community selects projects for funding with their allocation and provides the required non-federal match.

The proposed project involves construction of Priority I and Priority II as shown on the attached map.

Priority I will provide a more direct trail connection between Missoula's Riverfront Trail and the University of Montana and a second direct connection between campus sidewalks and the Riverfront. This portion of the project will construct an eight-foot wide compacted gravel trail running parallel to the roadway. The trail begins at the Riverfront under the Madison Street Bridge then continues in a southeast direction for 512' linear feet. The trail ends with 100' square feet of sidewalk to tie into the parking area at the intersection of Maurice and 5th Street. From there, trail users can cross 5th street (U-8114W) and enter campus. *Priority I* is primarily on MDT right-of-way.

Priority II involves widening the existing sidewalk immediately west of the Adams Student Recreation Center. The existing sidewalk is narrow and consequently, has many pedestrian/cyclist conflicts. The proposed project will widen 212' linear feet of the existing sidewalk by another twelve feet with a curb and gutter edge where it meets with the asphalt roadway. Two ADA curb ramps will be included for wheelchair accessibility.

The total project costs are estimated at \$79,000 which includes \$7,171 for construction engineering and \$71,829 for construction. MDT will administer the project throughout.

Summary

This project was approved locally by the Transportation Policy Coordinating Committee (TPCC) and the Transportation Technical Advisory Committee (TTAC) and is included in the *2005-2007 Missoula Transportation Improvement Program* (TIP). The Missoula TIP has approved \$44,600 in CMAQ funds for this project. The remaining balance is to be funded by local match.

Staff recommendations

Staff recommends the commission approve the addition of this project to the program.

Notes/discussion

Commission action

Agenda item: 06

Staff person handling: Loran Frazier, Chief Engineer

Date/location: May 25, 2006 in Helena, MT

Item: **Speed limit study**

Background

Staff has conducted speed limit studies on the following route:

North 19th Avenue – Bozeman

Summary

The appropriate local government supports the special speed zone recommendations (see attached correspondence behind the speed limit report.)

Staff recommendations

Staff recommends the commission approve the special speed zone as presented.

Notes/discussion

Commission action



Montana Department of Transportation

PO Box 201001

Helena, MT 59620-1001

Memorandum

To: Loran Frazier, P.E. – Chief Engineer
Highways and Engineering Division

From: Duane E. Williams, P.E.
Traffic and Safety Engineer

Date: May 2, 2006

Subject: **North 19th Avenue – Bozeman**
Speed Limit Investigation & Recommendations

- ❑ The North 19th Avenue corridor has experienced a significant amount of commercial growth since the existing speed limit configuration was placed into operation. The Department agreed to conduct this investigation while the work zone speed limits for the city's SID 1299(003) project were in operation. At the time of our investigation all construction activity had ceased.
- ❑ This study began at the intersection with Durston Road and continued north to the end of the route at the intersection with Springhill Road. North 19th Avenue was constructed in 1995. Most of the study area consists of a divided 4-lane facility transitioning to 2-lanes at the I-90 Interchange. The average annual daily traffic volume ranges from 5,800 north of I-90 to 23,000 approaching the intersection with Durston Road. The volume along the central portion of the corridor is 18,040.
- ❑ In the last three years there have been 157 accidents reported within the study area. The accident rate is 3.42 accidents per million vehicle miles traveled. The vast majority of the conflicts occurred at six signalized intersections.
- ❑ The original 55 mph speed limit is no longer realistic for traffic operation now that this corridor has developed. In addition to the commercial activity, traffic volumes and the level of traffic control necessary to manage this facility have also changed substantially. The following 40 mph speed limit recommendation was submitted to the City of Bozeman for review and comment. Bozeman City staff has concurred with the recommendation and the City Commission has not voiced any concerns. Attached is the email correspondence received from Director of Public Service.
- ❑ A 40 mph speed limit beginning at station 2+00, project STPU 1201(4) (the intersection with Durston Road) and continue north to the intersection with Springhill Road, an approximate distance of 2.55 miles.

Report Submitted to the City of Bozeman

In response to concerned citizens and with the support of the City of Bozeman a speed limit investigation was conducted on North 19th Avenue. This request stemmed from two issues. The North 19th Avenue corridor has experienced a significant amount of commercial development since the existing speed limit configuration was placed into operation. Secondly, with a work zone speed limit configuration in place during the construction of the city's SID 1299(003) project, there was confusion and complaints about the speed limits. The Department agreed to conduct a speed limit investigation while the work zone speed limit configuration was in operation within the existing 55 mph speed limit approved by the Montana Transportation Commission.

This investigation began at the intersection with Durston Road and continued north to the end of the route at the intersection with Springhill Road. North 19th Avenue was constructed in 1995. The city of Bozeman has since improved the segment from the intersection with Baxter Lane to the I-90 Interchange. Most of the study area consists of a divided 4-lane facility transitioning to 2-lanes at the I-90 Interchange. The intersections with Durston Road, Oak Street, Tschache Lane, Baxter Lane, Catal Street and East Valley Center Road are now under traffic signal control. The average annual daily traffic volume ranges from 5,800 north of I-90 to 23,000 approaching the intersection with Durston Road. The volume along the central portion of the corridor is 18,040.

The official speed limit is 55 mph along most of the route with transitional 35 mph and 45 mph speed limits in place between Durston Road and Oak Street. At the time of our investigation all construction activity had ceased. However, as mentioned earlier the 35 mph work zone speed limit from Baxter Lane to I-90 Interchange had been left in place. The speed limit south of Durston Road is statutorily 25 mph.

Accident History

The accident history was reviewed for a three-year period from June 1, 2002 to May 31, 2005. During this period there were 157 accidents reported within the study area. The accident rate is 3.42 accidents per million vehicle miles traveled. The following table lists the accident types by location.

	ANGLE	REAREND	SING. VEH.	OTHER
INTERSECTION	52	61	3	9
NON-INTERSECTION	4	20	6	2

Eighty percent of the accident experience is intersection related. The vast majority (108 of 125) of those conflicts are occurring at signalized intersections. Conflicts at mid-block locations were distributed throughout the study area.

There were 33 accidents reported at the intersection with Oak Street, 24 accidents at the intersection with Durston Road and 21 accidents at the intersection with Baxter Lane.

Travel Speeds

Radar was used to collect spot speed samples at eight mid-block locations. The following table depicts the travel speeds identified within the various speed zones along the route.

Location	85 th Percentile Speeds	Pace of Traffic Stream
At N. 22 nd Ave.	40 mph Northbound	(33 mph – 43 mph) 90%

45 mph Speed Zone	41 mph Southbound	(31 mph – 41 mph) 76%
Between W. Stevens & Oak St. 45 mph Speed Zone	41 mph Northbound 40 mph Southbound	(33 mph – 43 mph) 83% (31 mph – 41 mph) 84%
Between Tschache & Commerce 55 mph Speed Zone	41 mph Northbound 39 mph Southbound	(31 mph – 41 mph) 73% (31 mph – 41 mph) 83%
Between Baxter & Rawhide 35 mph Construction Speed Zone	42 mph Northbound 43 mph Southbound	(33 mph – 43 mph) 82% (33 mph – 43 mph) 78%
Between Rawhide & Catail 35 mph Construction Speed Zone	41 mph Northbound 39 mph Southbound	(33 mph – 43 mph) 71% (33 mph – 43 mph) 81%
Between Catail & Burke St. 35 mph Construction Speed Zone	36 mph Northbound 36 mph Southbound	(27 mph – 37 mph) 87% (27 mph – 37 mph) 88%
Interstate 90 Overpass 35 mph Construction Speed Zone	44 mph Northbound 40 mph Southbound	(33 mph – 43 mph) 58% (31 mph – 41 mph) 80%
Between I-90 & Springhill Road 55 mph Speed Zone	44 mph Northbound 42 mph Southbound	(35 mph – 45 mph) 76% (33 mph – 43 mph) 75%

The 85th percentile speeds and the upper limit of the pace are consistently around 40 mph along the majority of the route. There is a slight increase in the travel speeds along the segment between I-90 and the intersection with Springhill Road. As evidenced in the above table the travel speeds remained consistent regardless of changes in the posted speed limit.

Conclusions and Recommendations

At the time the existing speed limit configuration went into effect, North 19th Avenue had only been in operation for about year when the existing speed limits were approved. The adjacent side culture consisted of agricultural land and most of the side streets had not yet been constructed. Since then this corridor has changed dramatically. In addition to the commercial development, traffic volumes have increased and the traffic control devices necessary to manage this facility have also changed. Six intersections are now under traffic signal control.

The Commission approved speed limit configuration, the 55 mph speed limit in particular is no longer realistic for traffic operation. Based on the 85th percentile speeds and the pace of the traffic stream we recommend a 40 mph speed limit for the entire study area. However, in order to do so we will need the City of Bozeman's approval to increase the speed limit for 550 feet immediately north of the intersection with Durston Road from 35 mph to 40 mph. The 45 mph and 55 mph speed limits would be reduced to 40 mph to better coincide with the travel speeds. If city officials are not in favor of increasing the speed limit from 35 mph to 40 mph a short distance immediately north of Durston Road, we will adjust our recommendation to begin the 40 mph speed zone at the current posted 35 mph to 45 mph transition.

A 40 mph speed limit beginning at station 2+00, project STPU 1201(4) (the intersection with Durston Road) and continue north to the intersection with Springhill Road, an approximate distance of 2.55 miles.

DEW:DRB:TRF:n19th.rpt

attachments

Agenda item: 07

Staff person handling: Loran Frazier, Chief Engineer

Date/location: May 25, 2006 in Helena, MT

Item: **Access Control Resolution**

STPP-NH 8-4(51)107, 4435-051-000

Turn Bay – West Three Forks Interchange

Background

MDT is moving forward on the final design and the acquisition of right-of-way on a portion of Highway 287 west of Three Forks, Montana. Part of this process involves access management discussions and what degree of access will be allowed in the vicinity of the intersection. Access Control is proposed to improve the safety and through mobility of this intersection.

Before moving forward with individual landowner negotiations, it is necessary to bring this concept before the Transportation Commission for approval.

Summary

Scope of work of project

The proposed scope of work is to add a two-way left turn bay extending 0.65 km (0.4 mi) south of the interstate bridge and 1.1 km (0.68 mi) north of the bridge. Adding the turn bay will require widening the road and bridge, which will impact the interstate ramp approaches. In addition to widening, the bridge deck needs replacing, the vertical curve over the bridge is below standard and the bridge has seismic vulnerabilities. A cost benefit analysis was conducted comparing proposed retrofit/widening costs with replacement costs. It was determined to be more cost effective to replace the structure rather than retrofit and widen.

Location of project

This project is located on Highway 287 between RP 107.12± and RP 108.85± approximately 1.6 km (0.99 mi) west of Three Forks, Montana at the West Three Forks Interchange (I-90 Overpass). The project length is approximately 1800 meters (5,905 ft).

Public involvement

A public informational meeting was held on September 11, 2003 in Three Forks, MT. In general, the public wasn't concerned with the implementation of access control as long as each property has access to Highway 287. It is MDT's intent to provide reasonable access to each property but some approaches may be eliminated, relocated or combined into a shared approach.

Opposition to access control

Some landowners expressed concern about their approaches being eliminated or combined but there was no outright opposition to access control. Most of the public agreed that some sort of access control was needed to address the development that is occurring in this area.

District position

The Butte District supports implementing access control as part of this project.

Exhibits

Exhibit A: An overall map of the area, showing the project limits.

Staff recommendations

Staff recommends that the Transportation Commission approve the Access Control Resolution for this project.

Notes/discussion

Commission action

Agenda item: 08

Staff person handling: Loran Frazier, Chief Engineer

Date/location: May 25, 2006 in Helena, MT

Item: **Access Control Resolution**

STPHS 78-1(15)5, 4720-015-000

2000-SFTY Imp-8km NW Red Lodge

Background

MDT is moving forward on the final design and the acquisition of right-of-way on a portion of Highway 78 north of Red Lodge, Montana. This project was nominated to address an accident cluster location identified in 1999. In January 2001, an access control management plan was developed and approved for the entire length of Highway 78. As a result of this plan, the implementation of limited access control was recommended to improve the safety and through mobility of the highway.

Before moving forward with individual landowner negotiations, it is necessary to bring this concept before the Transportation Commission for approval.

Scope of work of project

This project was nominated to address an accident cluster location (P-78, RP 5.2 to 5.6) identified in 1999. The crash trend at this location is single vehicles leaving the roadway on a sharp horizontal curve, and reconstructing the curve to a larger radius with flatter slopes is recommended to address the problem. In addition to flattening the curve and side slopes, we will attempt to design the project to current geometric criteria, including providing stopping sight distance and route segment plan width.

Location of project

This project is located between RP 5.2 and 5.6 of P-78, in portions of Sections 5,6, and 8 of Township 7 South, Range 20 East, in Carbon County. In order to fit a flatter curve into the existing route, the limits of the project will be approximately from as-built station 288+00 to 308+00, a total length of about 610 meters (2000 feet). Survey has been started in metric and the design will be completed using metric units, with soft converted stationing increasing from south to north.

Public involvement

An extensive public involvement process was conducted for development of project STPP 78-1(6)0, MT 78 – Access Control. Public involvement included multiple public information meetings as well as individual, one-on-one meetings with landowners to discuss the Department's policy on access management and how it will relate to Montana Highway 78.

In general, the public expressed support for the implementation of limited access control as long as access is maintained to each property. It is MDT's intent to maintain reasonable access to each parcel.

District position

The Billings District supports implementing limited access control on this project.

Exhibits

Exhibit A: An overall map of the area, showing the project limits.

Staff recommendations

Staff recommends that the Transportation Commission approve the Access Control Resolution for this project.

Notes/discussion

Commission action

Agenda item: 09

Staff person handling: Loran Frazier

Date/location: April 13, 2006 in Helena, MT

Item: **Access Control Exceptions Committee – roles and responsibilities**
NH 0002(418) *US 93 Corridor Preservation (Evaro to Polson)*

Background

Through the environmental process and the negotiation of the Memorandum of Agreement (MOA), it was decided that this project should include access control.

To that end, the Commission designated this portion of Highway 93 as a controlled access highway and facility by executing an access control resolution on June 29, 1999. An access control plan consisting of an access classification plan and access control reports were then developed for this corridor. The Policy Oversight Group (POG) was tasked with the responsibility of overseeing the Access Control Plan and they in turn established an exceptions committee to review landowner requests for exceptions to the plan. Roles and responsibilities were established for the committee as well as an appeals process.

In 2004, the department negotiated a Memorandum of Understanding (MOU) with the Confederated Salish and Kootenai Tribes (CSKT). One of the items negotiated in the MOU was the establishment of an access committee to review landowner requests for access within the reservation and on MDT routes. The access review process included a provision for appeals. An appeal process was created to incorporate the Technical Design Committee (TDC) and the POG. This allowed for continued tribal input during the appeals process. A final appeal could go before the Transportation Commission.

After the MOU was negotiated, it was decided to consider modifying the Access Control Exceptions Committee roles and responsibilities to include the appeals process outlined within the MOU. The modified roles and responsibilities were presented to the Technical Design Committee on December 8, 2005. They approved the plan. The roles and responsibilities was then presented to the Policy Oversight Group at their February 22, 2006 meeting. They approved the plan.

Summary

The roles and responsibilities of the Exceptions Committee are being submitted to the Transportation Commission for consideration and approval of the **appeals process** outlined therein.

Staff recommendations

Staff recommends approving the appeals process.

Notes/discussion

Commission action

NH 0002 (418) 1744-418
US 93 Corridor Preservation (Evaro to Polson)
Access Management Plan*

Exceptions Committee Roles & Responsibilities
Summary

The US 93 Corridor Preservation Access Management Plan Exceptions Committee will be composed of technically qualified representatives with authority to act on behalf of the entity represented. The following are the entities to be represented:

1. Montana Department of Transportation (**one voting representative; District Traffic Engineer**)
2. Confederated Salish & Kootenai Tribes (**one voting representative**)
3. Federal Highway Administration (**one voting representative**)
4. **Lake County** (one voting representative when appropriate)
5. **Missoula County** (one voting representative when appropriate)
6. **City of Polson** (one voting representative when appropriate)
7. **City of Ronan** (one voting representative when appropriate)
8. **City of St. Ignatius** (one voting representative when appropriate)

“When appropriate” refers to County and City representatives acting only on decisions within their jurisdictional boundaries. Each entity shall indicate their voting representative by name at the beginning of each meeting. No meeting attendee shall vote unless designated an entity’s official representative at the commencement of that day’s meeting.

The Exceptions Committee Purpose

The Exceptions Committee is a structured, long-term Committee to hear and review access requests from landowners that are exceptions to the US 93 Access Management Plan. The Access Management Plan for US 93 Evaro – Polson was endorsed by the Transportation Commission. This Exceptions Committee remains in existence until the Transportation Commission approves the Final Access Management Plan. Any deviation from the Access Management Plan must be referred to the Exceptions Committee. All access points approved by the Access Management Plan or by the Exceptions Committee will be legal accesses and will be shown on the Right-of-Way plans for the US 93 Corridor Preservation project. Access points not shown on said Right-of-Way Plans shall be considered illegal and shall be closed.

* Note: References to Access Management Plan, Access Control Plan, and Access Classification Plan mean the same thing.

The Exceptions Committee Procedures

- Review shall be on a parcel-by-parcel, case-by-case basis.
- An access request must be presented to the Exceptions Committee as a whole rather than to individual members.
- Access requests are placed on the Committee's agenda by the Right-of-Way Bureau Access Management Manager upon receiving the request from the Landowner, Landowner's Agent or Right-of-Way Acquisition Agent.
- Exceptions Committee meetings shall regularly occur the last Thursday of each month, unless the Right-of-Way Bureau Access Management Manager determines there are no agenda items, or unless the date is a state or federal holiday. The scheduled meeting time may be changed by the Right-of-Way Bureau Access Management Manager for sufficient reason and upon notice to all parties who will present an agenda item. Meetings shall be held at the MDT Missoula District Office in Missoula, Montana.
- All records of Exceptions Committee meetings, including agendas, notes, and final minutes recording Committee decisions shall be kept by the Right-of-Way Bureau Access Management Manager, or designee. All permanent records shall be physically kept at the MDT Helena Right-of-Way Bureau.
- Access requests may be presented to the Committee by the landowner personally, or by the landowner's representative, or by the Right-of-Way Acquisition Agent, at the landowner's option. All presentations by anyone shall be complete, and include all possible access options, stationing, maps, plans, approach classifications requested, etc. No second appearances to consider additional information shall be allowed unless specifically directed by the Committee at the time of the initial request appearance.
- The Exceptions Committee makes the decision at their meeting of all appropriate representatives. No decisions shall be made by individual communication outside the regularly scheduled meeting.
- If unable to attend a meeting, a previously-designated representative may designate an alternate to attend the meeting and vote on the entity's behalf.
- Decisions shall be made by majority vote of the representatives present, including votes from entities appropriately voting on issues within their jurisdictional boundaries. "Majority" means a simple majority of appropriate voting members present.
- Meetings shall be open to the landowner, landowner's representatives, and any other interested individuals. The Committee shall hold discussions and votes in an open forum.
- Once notified of the Committee's decision, the landowner may appeal an Exceptions Committee decision to the Technical Design Committee (TDC) within 10 days of notification. The appeal request must be in writing, and should include a brief statement of the landowner's position. The appeal process shall be explained to each landowner in advance of the Exceptions Committee deliberations.
- The TDC may either vote on the landowner's access request via its own meeting procedures, or may choose to refer the issue to the Program Oversight Group (POG) for their consideration and action. Only issues or requests of project significance, or which may affect other parcels may be referred by TDC to POG. If a matter is referred, no action shall be taken nor voted upon by TDC.
- The landowner may appeal a TDC or POG decision to the Montana Transportation Commission.

The Appeals Process

All landowners shall be informed of the Exceptions Committee and appeal process as soon as an access issue is identified by the Right-of-Way Acquisition Agent, or Right-of-Way Bureau Access Management Manager. The landowner's cost for the appeals process shall be at landowner's expense.

- Step 1: Landowner communicates concerns to MDT's Acquisition Agent or Right-of-Way Bureau Access Management Manager.
- Step 2: Landowner or Right-of-Way Acquisition Agent forwards access request to the Right-of-Way Bureau Access Management Manager to be placed on the next Exceptions Committee agenda. Access Management Manager places request on the Committee's agenda and ensures that landowner is notified of where and when the meeting will take place.
- Step 3: Landowner, landowner's representative, or Acquisition Agent appears at Exceptions Committee meeting with full presentation of all access requests, including type of access, classification, stationing, other options for access, etc.
- Step 4: Upon notification of an adverse decision, Landowner may appeal Exceptions Committee decision to TDC, in writing, within 10 days of notification of decision. TDC will consider the appeal through its regular agenda and decision-making procedures. Landowner will be notified of a TDC decision.
- Step 5: TDC may take no action on a significant-impact or other appropriate issue or access request, and instead refer the matter to the POG. Landowner will be notified if this referral occurs.
- Step 6: POG will consider the matter through its regular agenda and decision-making procedures. Landowner will be notified of a POG decision.
- Step 7: Upon notification of an adverse decision, Landowner may appeal the decision to the Montana Transportation Commission, by requesting the item on the Commission's agenda for its next meeting, through the usual MDT process for agenda items. The Transportation Commission shall render its decision, which may include upholding the TDC or POG decision without comment. Landowner will be notified of the decision.
- Step 8: Landowner may choose to appeal the Transportation Commission decision through the Montana District Court.

Classification of an access

Master Plan Access Classifications are:

- Field / Farm
- Residential
- Commercial
- Public

Agenda item: 10

Staff person handling: Loran Frazier, Chief Engineer

Date/location: May 25, 2006 in Helena, MT

Item: **Letting lists**

Background

Staff will distribute the most current lists of upcoming projects slated for advertisement and bid letting.

Staff recommendations

Staff recommends approval of the letting lists.

Notes/discussion

Commission action

Agenda item: 11

Staff person handling: Loran Frazier, Chief Engineer

Date/location: May 25, 2006 in Helena, MT

Item: **Certificates of completion**

Background

Attached are certificates of completion for March 2006.

Summary

<i>Month</i>	<i>Original contract amount (monthly total)</i>	<i>Final payment amount (monthly total)</i>
March 2006	\$4,136,873	\$4,547,034

Staff recommendation

Staff recommends approval.

Notes/discussion

Commission action

Agenda item: 12

Staff person handling: Loran Frazier, Chief Engineer

Date/location: May 25, 2006 in Helena, MT

Item: **Project change orders**

Background

Attached are project change orders for March 2006.

Summary

<i>Month</i>	<i>Total</i>
March 2006	\$601,332.07

Staff recommendation

Staff recommends approval.

Notes/discussion

Commission action

Agenda item: 13

Staff person handling: Loran Frazier, Chief Engineer

Date/location: May 25, 2006 in Helena, MT

Item: **Liquidated damages**

SFCS 419-1(11)0 *Jct MT 78 – SW*

Background

Riverside Contracting of Missoula, MT overran contract time by 6 days. Riverside Contracting signed the Contractors Final Inspection on April 18, 2006 agreeing to the amount of liquidated damages on this project. Our recommendation is noted below.

Summary

<u>Award date</u>	Feb 7, 2005
<i>Permission to proceed date</i>	Mar 14, 2005
<i>Work began</i>	July 27, 2005
<i>Work completed</i>	Oct 27, 2005
<i>Contract time</i>	30 working days
<i>Time used</i>	37 working days
<i>Work extensions</i>	1 working days
<i>Overrun</i>	6 day/s
<i>Contract amount</i>	\$448,094.63

Staff recommendations

We recommend assessing 6 days at \$967.00 per day for a total of \$5,802.

Notes/discussion

Commission action

Please note: if the commission takes no action, the liquidated damages will stand in the amount recommended above.

Agenda item: 14

Staff person handling: Jim Lynch, Director

Date/location: May 25, 2006 in Helena, MT

Item: **Commission discussion**

Notes/discussion

Agenda item: 15

Staff person handling: Jim Lynch, Director

Date/location: May 25, 2006 in Helena, MT

Item: **Public comment**

Notes/discussion

Agenda item: 16

Staff person handling: Jim Lynch, Director

Date/location: May 25, 2006 in Helena, MT

Item: **Next commission meeting**

Summary

The commission's next meeting will be held June 28-29. Chairman Kennedy has asked that the group assemble in Billings on June 28 between 10 am and 10:30 am.

At 10:30 am, the group will depart for a tour with the following itinerary: view the CTEP project at Pompey's Pillar, stop in Billings to see the Shiloh road corridor, look at a project in Laurel, drive the Beartooth highway, and end up in Red Lodge for the night. Lodging arrangements have been made at the Pollard.

The commission meeting on the June 29 will start at 8:30 am at the Red Lodge Pizza Company, located at 115 South Broadway Avenue in Red Lodge.

Notes/discussion